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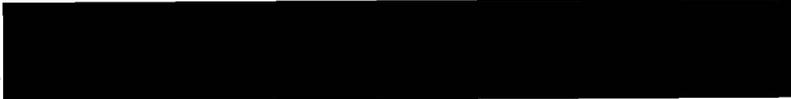


Office: NEBRASKA SERVICE CENTER Date: JAN 18 2008

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IN RE:

Petitioner:



Beneficiary:

PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a higher education and research institution. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a research associate. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

On appeal, counsel submits a brief and resubmits evidence already in the record. For the reasons discussed below, we uphold the director's decision.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(B) Outstanding professors and researchers. -- An alien is described in this subparagraph if--

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons

full-time in research activities and has achieved documented accomplishments in an academic field.

The regulation at 8 C.F.R. § 204.5(i)(3) states that a petition for an outstanding professor or researcher must be accompanied by:

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from current or former employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

This petition was filed on July 10, 2006 to classify the beneficiary as an outstanding researcher in the field of ophthalmology. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding.

The regulation at 8 C.F.R. § 204.5(i)(3)(i) states that a petition for an outstanding professor or researcher must be accompanied by “[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition.” The regulation lists six criteria, of which the beneficiary must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. More specifically, outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991)(enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). The petitioner claims to have satisfied the following criteria.¹

Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field.

It is significant that the proposed regulation relating to this classification would have required evidence of a major international award. The final rule removed the requirement that the award be “international,” but left the word “major.” The commentary states: “The word “international” has

¹ The petitioner does not claim that the beneficiary meets any criteria not discussed in this decision and the record contains no evidence relating to the omitted criteria.

been removed in order to accommodate the possibility that an alien might be recognized internationally as outstanding for having received a major award that is not international.” 56 Fed. Reg. 60897-01, 60899 (Nov. 29, 1991.)

Thus, the standard for this criterion is very high. The rule recognizes only the “possibility” that a major award that is not international would qualify. Significantly, even lesser international awards cannot serve to meet this criterion given the continued use of the word “major” in the final rule. *Cf.* 8 C.F.R. § 204.5(h)(3)(i) (allowing for “lesser” nationally or internationally recognized awards for a separate classification than the one sought in this matter).

The petitioner submitted evidence that the beneficiary received a Knights Templar Eye Foundation (KTEF) grant to fund his research proposal. Several of the reference letters attest to the significance of this grant. Expert opinions are not presumptive evidence of eligibility and may be evaluated in the context of the remaining evidence of record. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). The evidence about this grant submitted by the petitioner reveals that preference is given to young investigators at the beginning of their academic careers and an applicant “must **not** hold an academic rank of Associate Professor or higher.” (Emphasis in original.) Thus, the record clearly establishes that the most experienced members of the field do not, and in fact cannot, compete for this grant.

Regardless, research grants simply fund a scientist’s work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

In addition, the petitioner relies on the beneficiary’s receipt of a \$700 travel grant from the Association for Research in Vision and Ophthalmology (ARVO) to attend a meeting. The grant is described as a “travel stipend” and is null and void if the recipient does not attend the meeting and present his work. We are not persuaded that a travel stipend contingent on attending a meeting is a major nationally recognized award or prize indicative of or consistent with international recognition in the field.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

Documentation of the alien’s membership in associations in the academic field which require outstanding achievements of their members.

The petitioner submitted evidence of the beneficiary’s membership in ARVO and evidence that membership is limited to individuals “demonstrating a serious interest in *or* making a significant scientific contributions to visual science.” (Emphasis added.) In addition, some of the beneficiary’s

colleagues in China assert that the beneficiary was a member of exclusive Chinese societies, but the record contains no evidence of these memberships or the official membership requirements of the societies.

As the minimum membership requirement for ARVO is simply a serious interest in visual science, we are not persuaded that ARVO *requires* outstanding achievements of its members as mandated by the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B). Thus, we concur with the director that the petitioner has not established that the beneficiary meets this criterion.

Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation.

The petitioner has never asserted that the beneficiary meets this criterion. Nevertheless, we concur with the director that articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary. As such, they cannot be considered published material about the beneficiary.

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field.

[REDACTED], Editor-in-Chief for the *Chinese Journal of Ophthalmology* and a professor at Peking Union Medical College (where the beneficiary received his Ph.D.), confirms that the beneficiary has refereed articles for that journal. Being requested to review an article by a close colleague is not evidence indicative of or consistent with international recognition. Regardless, as stated by the director, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary meets this criterion.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

Obviously, the petitioner cannot satisfy this criterion simply by listing the beneficiary's past projects and demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary's research contributions have won comparable

recognition. To argue that all original research is, by definition, “outstanding” is to weaken that adjective beyond any useful meaning, and to presume that most research is “unoriginal.”

As stated above, outstanding researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. 56 Fed. Reg. 30703, 30705 (July 5, 1991). Any Ph.D. thesis, postdoctoral or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. To conclude that every researcher who performs original research that adds to the general pool of knowledge meets this criterion would render this criterion meaningless.

The beneficiary obtained his Ph.D. in Ophthalmology from Peking Union Medical College in 2002. His Ph.D. mentor was [REDACTED]. The beneficiary then worked as a research associate at that institution through August 2002, when he accepted a postdoctoral fellowship with the petitioner in the laboratory of [REDACTED].

We will consider the reference letters discussing the beneficiary’s research below. At the outset, however, we note that the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, CIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of international recognition and original contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner’s curriculum vitae and work and provide an opinion based solely on this review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with international recognition should be able to produce unsolicited materials reflecting that recognition.

explains that the beneficiary's Ph.D. research focused on a new surgical treatment (limited macular translocation (LMT)) for submacular choroidal neovascularization, the abnormal growth of new blood vessels under the central retina. [REDACTED] further asserts that the beneficiary used a rabbit model to establish the reliability and predictability of LMT. [REDACTED] continues:

[The beneficiary's] study was the first one in the world that pointed out the importance of controlling translocation direction to LMT; and suggested that adjusting the position of scleral shortening may control the translocation direction and improve the predictability. He also found that release of the scleral shortening sutures can reduce corneal astigmatism remarkably. Another part of [the beneficiary's] Ph.D. research was to modify the traditional vitrectomy (a critical procedure in LMT and other retina surgeries to remove the sticky vitreous aqueous in front of [the] retina) to make it more practical and efficient in animal experiments. This is a leap forward in retinal research using animal models.

[REDACTED] concludes that the beneficiary's modifications "have benefited and will certainly benefit more other researchers in this field" and that the beneficiary's articles in this area have been "widely cited by other retina investigators." The record, however, only confirms that one of the beneficiary's Chinese articles has been cited and that article (relating to intraspinal tumors) had only been cited once as of the date of [REDACTED]'s letter. [REDACTED] provides no examples of other retina surgeons or researchers using the beneficiary's modifications.

[REDACTED], former Chair of the Department of Ophthalmology at Peking Union Medical College Hospital, asserts that the beneficiary made great achievements in academic research in ophthalmology. [REDACTED] asserts specifically that the beneficiary reported the first case of diffusive infiltrating retinoblastoma in China in 1996 and was the first to report a relationship between lumbosacral intraspinal tumors and bilateral papilloedema. The beneficiary reported the latter results at a 1998 conference and published his findings in the *Chinese Medical Journal* in 2000. [REDACTED] further asserts that the beneficiary "independently designed a study investigating the effect of a new foldable intraocular lens," of great significance for the common surgery used to remove cataracts. Finally, [REDACTED] asserts that the beneficiary's Ph.D. thesis on LMT was published in a top Chinese journal "and has been cited by other researchers." Once again, the record does not support the claims that the beneficiary's articles reporting his research in China had been cited more than once as of the date of filing.

[REDACTED] praises the beneficiary's talent and professionalism generally. He further asserts that the beneficiary's research is "translational" in that the beneficiary has "developed drugs that are promising for the treatment of severe and common eye disorders such as diabetic retinopathy, age-related macular degeneration (the most common form of blindness in the US) and retinopathy of prematurity." [REDACTED] does not assert that any of these drugs developed by the beneficiary have been patented or are pending patent or that they are being investigated by pharmaceutical companies or other research institutions. [REDACTED] also states that the beneficiary has "pioneered the

combination of molecular and surgical techniques” for the treatment of the above eye diseases and conditions. Once again, [REDACTED] does not identify any eye surgeon or researcher utilizing the beneficiary’s techniques.

[REDACTED] an assistant professor at the petitioning institution, asserts that the beneficiary has “worked on developing strategies to introduce genes to prevent the proliferation of abnormal blood vessels in the eye,” known as neovascularization. [REDACTED] Chairman of the petitioner’s Department of Ophthalmology, explains that neovascularization is one of the major risk factors in graft rejection after corneal transplants. [REDACTED] elaborates that the beneficiary has “demonstrated the inhibitory effect of several genes on neovascularization in two animals’ models of the disease.” While [REDACTED] asserts that the beneficiary has presented and published this work, he does not explain how it has already impacted the field. [REDACTED] speculates that “gene transfer using these genes will be very useful in the treatment of ocular neovascular diseases and will benefit millions of patients in the USA,” but does not affirm that this work has already impacted the treatment of neovascularization or profoundly advanced research in this area.

[REDACTED] also discusses the beneficiary’s research on apoptosis, programmed cell death, and its relation to central retinal artery occlusion (CRAO). According to [REDACTED], the beneficiary has “elucidated the molecular pathway to apoptosis in a mouse model of the disease.” Finally, Dr. [REDACTED] explains that the beneficiary has shown “that at least four subtypes of a protein called RTEF may regulate the development of this neovascularization in a mouse model” of childhood blindness, retinopathy of prematurity (ROP). [REDACTED] notes that the beneficiary received the KTEF research grant for his ROP research. [REDACTED], a former visiting scholar in [REDACTED]’s laboratory, provides similar information to that provided by other colleagues at the petitioning institution.

The petitioner did provide two letters from researchers in the field who have not worked with the beneficiary. [REDACTED] Director of Vitreo-Retinal Diseases and Surgery at Indiana University, asserts that he came to know of the beneficiary’s work through his article on the association between papilloedema and lumbo-sacral intraspinal tumors. [REDACTED] reiterates the beneficiary’s research findings, characterizing them as significant, but does not assert that he himself has applied the beneficiary’s techniques.

[REDACTED], Chairman of the Department of Ophthalmology at the University of Southern California, asserts that he is familiar with the beneficiary’s work based on a review of the beneficiary’s articles, hearing his presentations and assessments from the beneficiary’s colleagues. [REDACTED] also reiterates the beneficiary’s research findings, asserting that they have had a “significant impact.” [REDACTED] concludes that the beneficiary’s gene therapy findings “were undoubtedly tremendous contributions to gene therapy research involving angiogenic diseases, and might ultimately lead to the development of new biological therapy for ocular neovascularization.” [REDACTED] does not assert that his own research has benefited from the beneficiary’s work.

Finally, both I [REDACTED] and [REDACTED] assert that the beneficiary's citation record is an indication of the significance of his research. The beneficiary's documented citation record as of the date of filing, however, is not significant. Specifically, as stated above, one of the beneficiary's articles regarding his work in China had been cited only once. In addition, eight independent research teams had cited the beneficiary's article on corneal transduction. While we recognize that research is a collaborative effort, we cannot ignore that the beneficiary is listed as seventh out of nine authors on that article. Regardless, we do not find that a record of eight citations for a single article is a citation record consistent with international recognition as outstanding. We note that one of the eight citations, the article by [REDACTED], cites the beneficiary's use of a model reported by others in 1996, referenced in footnote 15 of [REDACTED]'s article. Thus, while [REDACTED]'s article cites the model favorably, it does not appear to be a model developed by the beneficiary. The record contains no evidence that more than two of the beneficiary's articles had been cited as of the date of filing.

While the beneficiary's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. The record does not establish that the beneficiary's research contributions are indicative of international recognition as outstanding in the field of ophthalmology.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

The beneficiary lists 31 articles on his curriculum vitae. The petitioner submitted copies of 10 of those articles. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." Moreover, the Department of Labor's Occupational Handbook 151 (2006-2007 ed.) indicates that a "solid record of published research is essential in obtaining a permanent position involving basic research." This above information reinforces our position that publication of scholarly articles is not automatically evidence of international recognition; we must consider the research community's reaction to those articles.

As stated above, only one of the beneficiary's articles had been cited even moderately as of the date of filing. There is no evidence of widespread or even consistent moderate citation. Thus, we are not persuaded that the beneficiary's publication record is sufficiently consistent with international recognition to meet this criterion.

The petitioner has shown that the beneficiary is a talented and prolific researcher, who has won the respect of his collaborators, employers, and mentors, while securing some degree of international exposure for his work. The record, however, stops short of elevating the beneficiary to the level of an alien who is internationally recognized as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.